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No. 92-1762

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

AUGUSTUS J. SIMMONS,

Petitioner,

v.

EMIL H. FRANKEL, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF FOR RESPONDENTS EMIL H. FRANKEL, COMMISSIONER OF TRANSPORTATION AND RICHARD BLUMENTHAL, ATTORNEY GENERAL IN OPPOSITION TO PETITION

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QUESTION PRESENTED

Should petitioner's cause be reviewed by this Court?

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The respondents, Emil H. Frankel, Commissioner of Transportation and Richard Blumenthal, Attorney General, pray that a writ of certiorari, as requested by the petitioner, not be issued to review the judgment of the United States Court of Appeals for the Second Circuit, rendered on February 23, 1993.

STATEMENT OF THE CASE

Since the early 1960's, the petitioner has been in almost constant litigation with the State of Connecticut

and other defendants regarding his alleged ownership of three (3) parcels of land located along route #20 in the Town of East Granby, Connecticut, which parcels are part of the State-owned Bradley International Airport.

In 1980, the Connecticut Supreme Court finally put to rest the prior 20 years of litigation by affirming two Superior Court judgments, clearly and absolutely vesting title to the parcels in question with the State of Connecticut (*Simmons v. Wetherall*, 180 Conn. 587, 430 A.2d 1296 (1980).

Mr. Simmons has not accepted this final appellate court decision, and to this date, has initiated seven (7) State Superior Court actions and, including this case, five (5) District Court of Connecticut matters against the State and others all seeking to reverse the 1980 Connecticut Supreme Court decision and the trial court judgments. Mr. Simmons has not prevailed in any of these matters. The chart set forth in the Appendix summarizes the post 1978 litigation initiated by Mr. Simmons. App. A-1.

In 1987, the United States of America filed a petition for removal of a Superior Court action to the District Court of Connecticut. That case is captioned *Augustus J. Simmons v. William Burns, et al.* Civil No. H-87-732 (JAC) D.Conn. The state defendants filed a motion to dismiss the action. The Court granted the State's motion (Ruling On Motion To Dismiss, November 10, 1987) (App. A-5). Mr. Simmons filed a motion to set aside the dismissal, and the Court (Cabranes, J.) on March 15, 1988 ruled on this and a number of other pending motions filed by the plaintiff and the other defendants, which Ruling and Order sustained the dismissal and also enjoined (*sua*

sponte) Mr. Simmons from further District Court litigation regarding his former ownership of the three parcels of land. (See Ruling On Pending Motions And Orders App. A-7.)

This Order, including the injunction, was affirmed by the United States Court of Appeals for the Second Circuit (*Simmons v. Burns. et al.*, Docket No. 88-6093 (2d Cir., Oct. 5, 1988 unreported) (App. A-26) and this Supreme Court denied a petition for a writ of certiorari in *Simmons v. Burns*, et al., No. 88-693, Nov. 28, 1988. App. A-29.

Notwithstanding the above cited District Court and Court of Appeals Rulings and Orders enjoining him, the petitioner in 1992 initiated a Connecticut District Court action which the District Court dismissed, *sua sponte*, (*Simmons v. Frankel, et al.*, No. 292 CV00395(PCD), July 1992). P.App. at App. 8a-10a.[1]

The United States Court of Appeals for the Second Circuit affirmed the District Court dismissal and the imposition of sanctions against the petitioner (*Simmons v. Frankel, et al.*, No. 92-6208, Feb. 23, 1993). (P.App. at App. 1a-7a). The Court Order states in part as follows:

> Not dissuaded by the final judgment granting title of the disputed real property to the State of Connecticut, Simmons continued to pursue the issue. Simmons filed seven state and five federal proceedings after the 1978 stipulation was certified. Then in a 1988 order, Judge Cabranes enjoined Simmons from filing "any state or federal claims in any federal court against any of

---

[1] The Appendix to the petition is designated "P.App. at App. ___."

> the defendants named in the complaint in this lawsuit if such lawsuit related to his alleged ownership" of the disputed real property. Affirming Judge Cabranes's order in all respects, this Court warned that any violation of that injunction could be punished as contempt of court and imposed double court costs against Simmons. *Simmons v. Burns*, No. 88-6093 (2d Cir. Oct. 5, 1988) (unpublished summary order).
>
> Despite this Court's attempt to stem the flow of vexatious litigation by Simmons, we are confronted once again with an attempt by him to litigate a matter barred by res judicata. Notwithstanding Simmons's attempt to circumvent the injunction by changing the named defendants, the instant complaint clearly relates to Simmons's ownership of the East Granby land. Thus, Simmons has violated Judge Cabranes's injunction. Furthermore, even without the injunction, Judge Dorsey's dismissal of the complaint *sua sponte* would be affirmed based on res judicata grounds. P.App. at App. 3a-4a.

The petitioner has now filed the instant Petition for Writ of Certiorari. The issues raised in this litigation are, in essence, the same that petitioner has repeatedly raised in the many prior actions instituted by the petitioner and which have been conclusively resolved against him. The petitioner now asks this Supreme Court to consider them yet again. Clearly, under Rule 10 of the Rules of the Supreme Court of the United States, the considerations governing review on the writ of certiorari establish beyond doubt that petitioner's cause does not warrant review.

———♦———

REASONS FOR DENIAL OF THE PETITION

The respondents respectfully represent that there are no special or important reasons to support the Petition. The United States Court of Appeals for the Second Circuit has not rendered a decision in conflict with the decision of another United States court of appeals on the same matter; has not decided a federal question in conflict with the Connecticut Supreme Court; nor has the Appeals Court so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Supreme Court's power of supervision. Further, the Appeals Court decision is not in conflict with decisions of this Court. (See Rule 10 of the Rules of the Supreme Court of the United States.)

ARGUMENT

The decision of the District Court dismissing the complaint and imposing sanctions against the petitioner and the summary order of the Court of Appeals for the Second Circuit affirming the District Court order were both appropriate, proper and in accord with the doctrine of res judicata, the doctrine of *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 43 S.Ct. 288, 66 L.Ed. 396 (1923), and the prohibition of using the federal courts to collaterally attack state court judgments as set forth in 28 U.S.C. Sec. 1738.

Further, the petitioner by initiating this most current litigation has clearly, directly, intentionally and without justification violated the valid and outstanding 1988 Order of the District Court (Cabranes, J.) prohibiting and

enjoining him from litigating these same issues. (See Ruling on Pending Motions and Order *Simmons v. Burns, et al.*, App. A-21-23.)

In a civil rights suit under 42 U.S.C. Sec. 1983, entitled *Migra v. Warren City School District Board of Education,* 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed. 2d 56 (1984), this Supreme Court, at page 896, stated as follows regarding res judicata and the federal full faith and credit statute 28 U.S.C. Sec. 1738:

> It is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered.

In Connecticut, a valid judgment entered by agreement or consent is conclusive to the same extent as a valid judgment rendered after adjudication on the merits. See *Connecticut Pharmaceutical Association v. Milano,* 191 Conn. 555, 558 (1983); *Gagne v. Norton,* 189 Conn. 29, 34 (1982). The Connecticut Supreme Court in *Simmons v. Wetherall,* 180 Conn. 587, 430 A.2d 1296 (1980), affirmed the lower court judgments whereby title of the disputed land vested in the State of Connecticut. In the instant action, petitioner has once again asserted claims which rest upon his alleged ownership of the same three parcels.

In *Rooker,* supra this Supreme Court set forth the proposition that the federal courts are not to be used as appeal courts from state court decisions. Therefore, the

petitioner cannot litigate the same issues before the federal courts that were conclusively decided by the Connecticut Supreme Court in 1980.

CONCLUSION

Based upon the foregoing, it is clear that the petitioner has not established any basis upon which this Court, in its discretion, should grant review. Accordingly, it is respectfully urged that the petition be denied.

Respectfully submitted,

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POST 1978 JUDGMENT AND SUPPLEMENTAL JUDGMENT
AFFIRMED IN *SIMMONS V. WETHERELL* 180 CONN. 587 430 A.2d 1296 (1980)

I. **STATE COURT PROCEEDINGS:**

	Superior Court	Appellate Court	Supreme Court	United States Supreme Court
1.	CV-70-163875 Motion for Declaratory Relief Feb. 1984 dismissed	3 Conn. App. 672(1985) Affirmed	—	—
2.	CV-86-312557 Jan. 1986 dismissed	9 Conn. App. 802(1986) Affirmed	201 Conn. 815(1986) Pet. Cert. denied	—
3.	CV-87-0334855 Aug. 1987 Dismissed (removed to U.S. District Court – See H-87-732(JAC) below)	—	—	—

	Superior Court	Appellate Court	Supreme Court	United States Supreme Court
4.	CV-89-7003133 July 1989 dismissed	24 Conn. App. 801(1991) Affirmed	218 Conn. 901(1991) Pet. Cert. denied	90-1807 Cert. denied Oct. 7, 1991
5.	CV-90-701038 May 1990 dismissed P.B. Sec. 111 sanctions	—	—	—
6.	CV-70-163875 Motion of Referral to Referee Denied Objection sustained December 1991	A.C. 10918 Orders (unreported) 1. Appeal Dismissed 2. Sanctions Imposed April 3, 1992	222 Conn. 906(1992) Pet. Cert. Denied	—
7.	CV-92-0505388S December 1991 Dismissed Sanctions imposed May 1992	—	—	—

II **FEDERAL COURT PROCEEDINGS:**

	United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
1.	H-81-778 (JAC) 1981		
2.	H-83-225 (TEC) 1983		
	Consolidated-dismissed Aug. 16, 1983	83-6257 (1983) Affirmed	83-1833 Cert. denied Oct. 1, 1984
3.	H-85-45 (MJB) 1985 Dismissed	85-6087 (1985) Affirmed notice of future sanctions	—

	United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
4.	H-87-732 (JAC) 1987 Dismissed plaintiff enjoined from further federal district court actions	88-6093 (1988) Affirmed Sanctions imposed	88-693 Cert. denied Nov. 28, 1988
5.	292 CV 00395(PCD) June 1992 Dismissed Sanctions imposed	92-6208 (1993) Affirmed Sanctions imposed	92-1762 Pending

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS :

-vs- :

J. WILLIAM BURNS, et al. : Civil No. H-87-732 (PCD)

RULING ON MOTION TO DISMISS

Plaintiff commenced this action in state court on August 10, 1987. The action was removed to this court on the petition of the defendant Administrator of the Federal Aviation Administration. Defendants Julian Tashjian, Secretary of the State of Connecticut, and William Burns, Commissioner of the Connecticut Department of Transportation, move to dismiss the action as to them.

Plaintiff's complaint against the state defendants essentially seeks to quiet title to certain parcels of land and to eject the State of Connecticut from possession of that land. The complaint is only the latest in a long line of state and federal actions which plaintiff has filed relating to the same subject. However, these issues were validly and finally adjudicated in *Simmons v. Wetherall,* No. 163875 (Superior Court January 4, 1978, as modified June 2, 1978). The judgment entered in that case was affirmed on appeal by the Connecticut Supreme Court. *Simmons v. Wetherall,* 180 Conn. 587 (1980). Plaintiff is bound by that judgment through the doctrine of res judicata. Moreover, his complaint is impermissible either as an attempt to appeal to this court from the state court judgment, *Rooker v. Fidelity Trust Co.,* 261 U.S. 114 (1923), or to collaterally attack that judgment.

For the foregoing reasons, the motion of the state defendants to dismiss the complaint is granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 10th day of November, 1987.

/s/ Peter C. Dorsey
Peter C. Dorsey
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS :

v. :

WILLIAM BURNS, et al. : CIVIL NO. H-87-732(JAC)

RULING ON PENDING MOTIONS AND ORDER

(Filed March 15, 1988)

This represents the latest, and this court hopes, the final chapter in the epic tale of one *pro se* plaintiff's passion for engaging in vexatious litigation. Plaintiff Augustus Simmons has struggled for over twenty-four years to control several parcels of land situated in the Town of East Granby, parcels which long ago became part of Bradley Interational [sic] Airport. The instant action seeks, *inter alia*, declaratory and injunctive relief and damages against various state and federal defendants, all of which claims rest upon plaintiff's reassertion of his lawful ownership of these parcels. Insofar as is relevant to the pending motions, plaintiff also asserts various complaints against two attorneys who represented him at an earlier stage in this struggle. Presently pending is an assortment of motions filed by plaintiff of varying degrees of intelligbility [sic] and importance. Because the determinations on the merits of Plaintiff's Motion to Set Aside Dismissal of State Defendants (filed Dec. 1, 1987) ("Motion to Set Aside Dismissal"), the Federal Defendant's Motion to Dismiss (filed Nov. 30, 1987) and Defendant Rogin and Hirtle's Motion for Summary Judgment (filed Jan. 6, 1988) are dispositive of the claims against

these defendants, these are the only motions which the court will discuss at any length.

For the reasons set forth below, the complaints against the state and federal defendants, are DISMISSED WITH PREJUDICE; summary judgment is GRANTED for defendants Rogin and Hirtle.

I

BACKGROUND

It is difficult to summarize the tortuous path of this litigation. We rehearse this history here because the repetitiveness of it is in large part the ground for our decision. Fully fifteen years ago, our Court of Appeals described the beginnings of the story as follows:

> The battle began [in 1964] when the state aeronautics commission moved under Conn. Gen. Stat. § 15-79, which then governed taking of land for airports, to condemn the Simmons property [adjoining Bradley International Airport]. Pursuant to the statute, a petition for the determination of compensation was brought by the state in Hartford Superior Court; a judgment was rendered finding the taking reasonable and appointing a referee to assess damages. Anastasia Simmons [plaintiff's mother] appealed to the Connecticut Supreme Court, which reversed, finding error in the trial court's exclusion of evidence offered to show that property similarly situated had not been taken. *State v. Simmons*, 153 Conn. 351, 216 A.2d 632 (1966). Since this evidence was held to be relevant on the issue of whether the state had acted arbitrarily in singling out the Simmons land, the case was remanded for a new trial.

While the first suit was pending, Mrs. Simmons died, and Augustus entered the fray. Before the second trial began, he raised as an affirmative defense to the taking the fact that the state authorities had not received the requisite statutory approval from the Town of East Granby before proceeding with the condemnation. The trial court agreed; the Supreme Court affirmed. *State v. Simmons*, 155 Conn. 502, 234 A.2d 835 (1967). Round two for the Simmons family.

Undaunted, the state tried again, this time attempting to use Conn. Gen. Stat. § 48-12, the general condemnation statute, which provided for procedures different from section 15-79 in cases where compensation could not be agreed upon by the parties. The Simmons family prevailed again, in *Simmons v. State*, 160 Conn. 492, 280 A.2d 351 (1971), when the Supreme Court held that the state was required to use the section 15-79 procedure.

At about the same time the abortive condemnation attempts were taking place, a related dispute arose between the state and Simmons over some land upon which runway lights had been placed. Simmons claimed that the land was his; the state said it was the state's. An ejectment action followed. In *Simmons v. Parizek*, 158 Conn. 304, 259 A.2d 642 (1969), the Supreme Court held that since the complaint did not allege that the state officials had acted unconstitutionally or in a manner unauthorized by some statute, the suit was barred by the doctrine of sovereign immunity. Appellant took the hint, and on October 14, 1969 resurrected the ejectment action, this time alleging that the taking of the land and the erection of runway lights was done both unconstitutionally and without statutory authorization. That suit, Docket No. 162923,

> Hartford Superior Court, [was] still pending [as of January, 1973].
>
> Shortly before the Connecticut Superior Court decision in *Simmons v. Parizek, supra,* a Special Act was passed by the Connecticut General Assembly, allowing Augustus Simmons to sue the state for damages over "loss of use of land," arising out of the bumbling condemnation proceedings. On January 5, 1970, Simmons brought such a suit, Docket No. 163875, Hartford Superior Court; [as of January, 1973,] the action [was] still pending.
>
> Thus, if there ever was a litigant who knew that his claims would be fairly heard in the state courts, Augustus Simmons was he. Nevertheless, perhaps for a change of setting, he instituted [a] section 1983 action on December 22, 1971 [in the United States District Court for the District of Connecticut, *Simmons v. Wetherall,* Civil No. 14806] alleging that his property was taken without due compensation, and seeking damages.

Simmons v. Wetherall, 472 F.2d 509, 510-11 (2d Cir.), *cert. denied,* 412 U.S. 940 (1973); *see also Simmons v. McKone,* 158 Conn. 71 (1969) (lawsuit concerning plaintiff's succession to the land).

Judge Blumenfeld dismissed the section 1983 action after finding that, at most, Simmons had alleged a tortious interference with his property by state officials. Upon review of Judge Blumenfeld's decision, our Court of Appeals determined that Simmons' claim also involved a boundary dispute; accordingly, it affirmed in part and remanded in part so that the district court could stay the action pending resolution of one of two state court proceedings. *See Simmons v. Wetherall,* 472 F.2d at 511-12.

In December, 1977, the plaintiff retained the firm of Rogin, Nassau, Caplan, Lassman & Hirtle to represent him in his then-pending cases. Attorneys Edward Rogin and Robert Hirtle, two defendants in the instant action, were partners in that firm. Negotiations ensued, and Docket No. 163875 was consolidated with Docket No. 162923 and three other related actions that Simmons had pending in the Connecticut Superior Court. On December 13, 1977, state referee Louis Shapiro, with the consent of the parties, entered a final judgment by stipulation in the consolidated actions, a judgment which promised to end years of litigation. Pursuant to the judgment by stipulation, the plaintiff, still represented by Rogin, Nassau, Caplan, Lassman & Hirtle, agreed, *inter alia*, to sell the disputed parcels of land to the state for $518,000.

The resolution of the matter was short-lived. Only days after the settlement, Simmons voiced his refusal to accept the terms of the judgment, terms which he had previously stated were satisfactory. Specifically, Simmons wanted to retain one piece of "Parcel A," the whole of which he had agreed to sell on December 13, 1977. Again, the plaintiff's attorneys negotiated. On January 4, 1978, the state agreed to allow the plaintiff to retain the requested portion of Parcel A. In return, the plaintiff agreed to sell the remaining disputed land for $385,600. He further agreed that the '[j]udgment entered in this matter be a full and final settlement between the parties of any and all claims and disputes concerning said parcels of land and any and all other claims contained in the above consolidated cases." Memorandum in Support of Motion to Dismiss (filed Oct. 7, 1987) ("State Defendant's Memorandum"), Exhibit A at 3. Pursuant to the new

agreement and judgment, a closing was scheduled for January 24, 1978, at which time the exchange of title was to be consummated. *See* Affidavit of Robert Hirtle *attached to* Motion for Summary Judgment by Defendants Edward Rogin and Robert Hirtle (filed Jan. 6, 1988) at 2-3.

Before the closing, however, Simmons apparently encumbered the property by leasing a portion of it, notwithstanding that he knew title was to vest in the state pursuant to the stipulated judgment. Simmons took this action without the prior knowledge of his attorneys, and eventually, he refused to cooperate with his attorneys. On April 20, 1978, the firm sent the plaintiff a notice of its withdrawl [sic] as his counsel. *See id.* at 3.

On June 1, 1978, the plaintiff, acting *pro se,* filed a motion to reopen the judgment entered January 4, 1978. In rejecting the plaintiff's request, the state referee wrote:

> The plaintiff argued that Attorney Robert L. Hirtle, Jr., of the firm Rogin, Nassau, Caplan, Lassman and Hirtle, failed to disclose to him that he once served as an assistant attorney general for the State. His claim is that this created a conflict of interests and thereby he was not fully and adequately represented at the prior proceedings. It is true that Hirtle served as an assistant attorney general between 1965 and 1971. Thereafter he joined the Rogin law firm. Hirtle stated that before the Rogin firm entered the settlement talks he discussed with the plaintiff his former affiliation. The plaintiff was informed by his other counsel that Hirtle's intervention would be beneficial to the plaintiff. As it turned out, Attorneys Salzman and Silverman who represented the plaintiff in the trial before me of case #162923, *Simmons v. Parizek, et al.*

which went to judgment, were unable to negotiate a post judgment settlement with the state. The Rogin firm entered an appearance at a later date and the participation of attorneys Edward Rogin and Hirtle in discussions with the attorney general's office brought results. At a date prior to January 4, 1978, being on December 13, 1977, these five cases were settled by agreement with plaintiff and all attorneys. At this point, the plaintiff lauded his counsel and stated for the record his satisfaction with the settlement in the amount of five hundred and eighteen thousand dollars. A judgment was entered for the amount with full and clear consent of the plaintiff. A few days later, the plaintiff suddenly notified the court that he was unhappy with the settlement. As a result, with consent of counsel, the judgment was vacated . . . .

Plaintiff and his counsel, following further discussion with the Attorney General's office, came before the undersigned at a hearing on January 4, 1978. As a result of further discussions between the parties, an agreement was reached whereby the plaintiff was to retain the portion of land to which he desired to retain title. . . . Following this action judgment was entered on January 4, 1978 . . . .

I have carefully reviewed the plaintiff's claims under his motion. I find that in entering the judgment of January 4, 1978, the plaintiff was fully, adequately and skillfully represented by counsel at these prior proceedings. I find no conflict of interests as may be related to Attorney Hirtle. He rendered the highest degree of service and devotion to his client's (Plaintiff's) interest. As a result, the settlement reached was, in my judgment, the optimum. The plaintiff stated for the record, on January 4, 1978, how pleased he was with the result.

> I must conclude that I find no merit in plaintiff's motion. He has played fast and loose with the court, his counsel and the state. His conduct is devious indeed.

State Defendants' Memorandum, Exhibit E.

Accordingly, the state secured a supplemental judgment dated June 2, 1978, *see id.*, Exhibit B, under which all encumbrances on the property were to be removed, and title to the disputed parcels of land automatically was vested in the state. The state referee further ordered the state to deposit with the Clerk of the Superior Court $385,600 on behalf of plaintiff. Plaintiff appealed the stipulated judgment, and the Supreme Court upheld it and the findings of the trial referee. *See Simmons v. Wetherall,* 180 Conn. 587 (1980) (*per curiam*). As of June 29, 1987, pursuant to this judgment, there was on deposit in United States treasury bills the sum of $497,314.24. This sum represents principal and interest and apparently is available to plaintiff upon appropriate motion to the Clerk of the Superior Court. *See* State Defendants' Memorandum, Exhibits C and D.

Ignoring principles of res judicata and collateral estoppel, plaintiff then commenced a new series of state and federal court actions in which he raised claims which were, without exception, reiterations of the claims ultimately decided by the state Supreme Court in *Simmons v. Wetherall.*

For example, in 1981, the plaintiff initiated an action in this court in which he alleged that the taking of his land had violated his constitutional rights. *See Simmons v. United States Government,* Civil No. H-81-778 (JAC). In

1983, he initiated another action which sounded in trespass and ejectment. *See Simmons v. United States of America,* Civil No. H-83-225 (TEC). These two cases were consolidated in this court and dismissed as barred by res judicata in an order also noting that, by bringing these cases in federal court, plaintiff was impermissibly mounting collateral attacks on a valid state court judgment. *See* Order (dated Aug. 16, 1983) (Cabranes, J.). Our court of appeals affirmed that decision on appeal. *See Simmons v. Powers, Simmons v. United States,* Docket No. 83-6257 (2d Cir. Dec. 20, 1983) (unpublished order); *see* State Defendants' Memorandum, Exhibits F and G. Thereafter, the United States Supreme Court denied plaintiff's petition for a writ of certioriari [sic]. *See* State Defendants' Memorandum, Exhibit H.

Notwithstanding the rejection of his claims by every state and federal trial and apellate [sic] court having any arguable basis for assuming jurisdiction, this zealous litigant initiated yet another federal lawsuit in January, 1985. The plaintiff's strategy to avoid the res judicata effect of the 1978 state supplemental judgment was to allege new violations of federal statutes and to bring in an assortment of new defendants to join the old. Again, the court dismissed the complaint on res judicata grounds. *See Simmons v. Dole,* Civil No. H-85-45 (D.Conn. Apr. 8, 1985) (Blumenfeld, J.). Again, plaintiff appealed and the Court of Appeals affirmed, stating:

> We agree with the April 8, 1985, order of the district court dismissing appellant's claims on the ground of res judicata. We also consider this a frivolous appeal. Appellant has litigated the same matters numerous times before in both state and federal courts over a period of many

> years. Because appellant is a pro se litigant, we are not imposing sanctions at this time. However, appellant is hereby placed on notice that he risks imposition of sanctions in the future should be seek once again to relitigate these same matters.

Simmons v. United States, Docket No. 85-6087 (2d Cir. Nov. 22, 1985) (unpublished order).

Undeterred, plaintiff mounted another attack in Connecticut Superior Court just a few months later. In the new suit, filed in January 1986, he attempted to recover damages from the state. The state's motion to dismiss was granted. The Connecticut Appellate Court affirmed the dismissal, *see Simmons v. Burns*, 9 Conn.App. 802 (1986) (*per curiam*), and the Connecticut Supreme Court denied certification to appeal, *see Simmons v. Burns*, 201 Conn. 815 (1986).

II

THE INSTANT ACTION

Plaintiff commenced the instant action in Connecticut Superior Court on August 10, 1987. The action was removed on the petition of one of the defendants, the Administrator of the Federal Aviation Administration. The only even arguable new element in this suit is a claim that plaintiff has suffered from legal malpractice at the hands of his former attorneys, Edward Rogin and Robert Hirtle. *Cf.* Opinion of State Referee, quoted above in this Ruling at 5-6.

Prior to transferring the case to the docket of this court, Judge Dorsey granted a motion to dismiss the

action as to state defendants Julia Tashjian, Secretary of the State of Connecticut, and J. William Burns, the Commissioner of the Connecticut Department of Transportation on res judicata grounds. *See Simmons v. Burns*, Civil No. H-87-732, Ruling on Motion to Dismiss (D.Conn. Nov. 19, 1987). Plaintiff has filed what can be construed as an objection to the granting of the state defendants' motion to dismiss, which is one of the pending motions to which this ruling is addressed.

Thereafter, defendants Rogin and Hirtle filed a motion for summary judgment and the federal defendant filed a motion to dismiss. These pending motions present the court with the opportunity to write the final chapter of this lengthy and tiresome story.

A. The Motions to Dismiss

The doctrine of res judicata bars relitigation of the same cause of action between the same parties or their successor in interest. *See Mohegan Tribe v. Connecticut*, 528 F.Supp. 1359, 1370 n. 2 (D.Conn. 1982). It is an absolute bar not only as to every matter which was offered to sustain a claim, but also as to any other matter which might have been offered for that purpose. *See State v. Aillon*, 189 Conn. 416, 423, *cert. denied*, 464 U.S. 837 (1983). "[A] federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment [sic] was rendered." *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 81 (1984). Moreover, a litigant "may not engage in extensive proceedings throughout the state court system, and then, after every point has been

decided against him by the state courts and the Supreme Court has denied certiorari, make a fresh start in federal court." *Friarton Estates Corp. v. City of New York,* 681 F.2d 150, 159 (2d Cir. 1982). Thus, issues which were actually litigated, or which could have been litigated, in a state court proceeding are entitled in a federal suit to the same preclusive effect accorded them by the state. *Migra,* 465 U.S. at 83; *Allen v. McCurry,* 449 U.S. 90, 94 (1980); *accord Kaufman v. Somers Board of Education,* 368 F.Supp. 28, 33 (D.Conn. 1973).

In Connecticut, a valid judgment entered by agreement or consent operates to end the controversy to the same extent as would a valid judgment rendered after adjudication on the merits. *See Connecticut Pharmaceutical Association v. Milano,* 191 Conn. 555, 558 (1983); *Gagne v. Norton,* 189 Conn. 29, 34 (1982). The Connecticut Supreme Court in *Simmons v. Wetherall,* 180 Conn. 587 (1980), upheld the actions of the state referee whereby title of the disputed land vested in the State of Connecticut. In the instant action, plaintiff asserts claims which rest upon his purported legal ownership of the same land.

Accordingly, Plaintiff's Motion to Set Aside Dismissal of State Defendants (filed Dec. 1, 1987) is DENIED, and the case against them is dismissed with prejudice.

Because the claims against the federal defendant rest upon the claim that the State of Connecticut is in wrongful possession of plaintiff's land, they are likewise barred. The Federal Defendant's Motion to Dismiss (filed Nov. 30, 1987) is therefore GRANTED, and the case against him is dismissed with prejudice.

B. Defendants Rogin's and Hirtle's Motion for Summary Judgment

Liberally construed, the complaint against Attorneys Rogin and Hirtle can be viewed as alleging fraud, breach of contract or legal malpractice. The adequacy and loyalty of their representation of plaintiff was explicitly addressed and decided against plaintiff by the state referee; the referee's denial of plaintiff's motion to reopen the judgment based claims of inadequate representation were upheld by the Connecticut Supreme Court in *Simmons v. Wetherall,* 180 Conn. at 589. Because the record does not demonstrate clearly that Rogin and Hirtle have been parties to litigation on the merits of any of these claims, there is some doubt whether they would be entitled in Connecticut courts to assert the prior state court judgment as a defense. *See State v. Ellis,* 197 Conn. 436, 462-69 (1985); *Doe v. Maher,* 40 Conn.Supp. 394, 405, 515 A.2d 134 (New Haven, 1986). It could be argued, consistently with the rationales of these decisions, that defendants *should* be so entitled because this plaintiff certainly has had a full and fair opportunity to litigate the claims. *See DiMauro v. Pavia,* 492 F.Supp. 1051, 1059 n. 7 (D.Conn.), *aff'd mem.,* 614 F.2d 1286 (2d Cir. 1979).

In any event, the record reveals another clear ground for granting summary judgment for Rogin and Hirtle. It is undisputed that these two attorneys ceased representing plaintiff almost nine years ago. Moreover, since plaintiff explicitly questioned the adequacy of their representation before the state referee in 1978, he cannot credibly argue that, until recently, he was unaware of the harm which he is alleged to have suffered at their hands.

Any suit based upon their representation is certainly barred by whatever statute of limitations might arguably be applicable. *See* Conn. Gen. Stat. § 52-576 (six-year limitation for actions based on simple or impled [sic] contract) and § 52-577 (three-year limitation for actions in tort, held applicable to legal malpractice in *Shuster v. Buckley*, 5 Conn.App. 473, 477 (1985)).

C. Prospective Relief

Finally, the court would be remiss if it did not put an end to plaintiff's vendetta and relieve its victims from the burden of vexatious relitigation of these issues. *See In re Martin-Trigona*, 737 F.2d 1254, 1262 (2d Cir. 1984), *cert. denied*, 106 S.Ct. 807 (1986); *see also Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986). The District Court has the authority to issue "all writs necessary or appropriate in and of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). It may be appropriate in some circumstances to enter an injunction to prevent the continuation of harassments which come from frivolous and repetitious lawsuits. *See, e.g., Matter of Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982), *cert. denied*, 459 U.S. 1206 (1983). Courts are not to be used as a vehicle for harassment by a litigant who asserts the same baseless claim repeatedly in slightly altered guises. *See Kane v. City of New York*, 468 F.Supp. 586, 590 (S.D.N.Y.), *aff'd mem.*, 614 F.2d 1288 (2d Cir. 1979). Although an order enjoining a particular plaintiff from commencing future actions is an unusual step, the courts have not hesitated to enter such orders where a litigant continues to abuse the legal process, and defendants, by filing meritless claims. *See, e.g., In re Martin-*

Trigona, 763 F.2d 140 (2d Cir. 1985), *cert. denied*, 106 S.Ct. 807 (1986).

Apart from such extraordinary and pathological examples as Anthony R. Martin-Trigona, it would be difficult to find a litigant more pertinacious that [sic] Augustus J. Simmons. This plaintiff has brought approximately one dozen suits arising out of the state's initially inept attempt to condemn his land over twenty years ago. At this point in his "legal career," he could not credibly argue that he believes, in good faith, that his claims have merit. *See* Fed. R. Civ. P. 11. He has harassed a variety of defendants and has squandered the resources of both state and federal courts, all due to his persistent refusal to accept as final the 1978 supplemental judgment of the Hartford Superior Court, and the 1980 decision of the Connecticut Supreme Court upholding that judgment. Our Court of Appeals has warned him unequivocally that he would risk the imposition of sanctions if he persisted in filing the same claim. It is difficult to believe, however, that any sanction, short of an injunction, would either be effective or appropriate to protect potential defendants and preserve judicial resources for other litigants who await their own day in court.

Accordingly, the court hereby ENJOINS plaintiff, Augustus J. Simmons, from filing in the United States District Court for the District of Connecticut or any other federal court any lawsuit in which he asserts the same claims as were litigated, or as might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Weatherall*, Docket No. 163875 (Superior Court at Hartford, Jan. 4, 1978, as modified June 2, 1978), *aff'd*,

180 Conn. 587 (1980), and all the cases consolidated therewith.

1. This injunction includes any filing in which the harm is alleged to have arisen from or relate to the plaintiff's ownership, at one time, of the parcels of land in the Town of East Granby as described in the original and supplemental judgments in *Simmons v. Wetherall*, Docket No. 163875, *supra*, and all cases consolidated therewith.

2. Plaintiff is also enjoined from filing any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit of such lawsuit related to his alleged ownership of the parcels of land described in the original and supplemental judgments in *Simmons v. Wetherall*, Docket No. 163875, *supra*, and all cases consolidated therewith.

3. This injunction applies only to lawsuits of the sort described above filed in the federal courts, including the United States District Court for the District of Connecticut. Nothing in this order shall be construed as restricting plaintiff's ability to file a suit in any state court. Nor shall it be construed as restricting plaintiff's ability to file suit in any federal court, so long as the lawsuit does not relate to plaintiff's alleged ownership of the parcels of land described in the original and supplemental judgments in *Simmons v. Wetherall*, Docket No. 163875, *supra*, and all the cases consolidated therewith.

4. Nothing in this order shall be construed to deny plaintiff access to the United States Court of Appeals for the Second Circuit, or to the Supreme Court of the United States, in any matter.

5. Nothing in this order shall be construed to prohibit Augustus J. Simmons from filing complaints under 28 U.S.C. § 372(c), provided, however, that nothing in this order, and nothing in this subsection in particular, shall be construed as intimating any view on the constitutionality of 28 U.S.C. § 372. *See, e.g.*, Rule § 0.24, Complaints with Respect to Conduct of Judges, Rules of the United States Court of Appeals for the Second Circuit (Nov. 1983) (identical disclaimer by the Judicial Council of the United States Court of Appeals for the Second Circuit).

6. All future complaints submitted by plaintiff to this court shall first be reviewed for compliance with this order. Any complaint that does not comply with this order shall not be docketed and will be returned to plaintiff.

In entering this injunction, the court reserves the right to order such additional relief as may become appropriate or necessary to accomplish its objective of protecting individuals and the system of justice from further abuse by this litigant.

III

CONCLUSION

For the reasons stated above:

(1) Plaintiff's Motion to Set Aside Dismissal of State Defendants is DENIED, and the case against the state defendants in DISMISSED with prejudice.

(2) The Federal Defendant's Motion to Dismiss is GRANTED, and the case against it is DISMISSED with prejudice.

(3) The Motion for Summary Judgment of Defendants Rogin and Hirtle is GRANTED. There being no just cause for delay, judgment shall enter forthwith for defendants Rogin and Hirtle. *See* Fed. R. Civ. P. 54(b).

(4) The other pending motions, identified in the note at the margin and having been resolved by decisions on the above motions, are denied as moot.[1]

(5) Plaintiff is enjoined, as specified above, from filing any lawsuit in federal court in which he asserts the same claims as were litigated, or might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Wetherall*, Docket No. 163875 (Superior Court at Hartford, Jan. 4, 1978, as modified June 2, 1978), *aff'd*, 180 Conn. 587 (1980), and all the cases consolidated therewith.

It is so ordered.

Dated at New Haven, Connecticut, this 15th day of March, 1988.

Jose A. Cabranes
United States District Judge

NOTE

[1] The following motions filed by plaintiff are hereby denied as moot: Motion for Payment of Rent (filed Sept. 29, 1987); Motion for Order of Referral and Enforcement of 49 U.S.C. § 2216 (filed Nov. 12, 1987); Petition for Hearing on Determination of Due Process (Civil Process) Under 14th Amendment Upon all Necessary Parties (filed Nov. 19, 1987); Motion for Payment of Real Property Taxes by Federal Aviation Administration under 49 CFR § 25.106(c) (filed Nov. 25, 1987); Motion to Set Aside State Court Judgment Rendered Without the "Necessary Parties" (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Just Compensation (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Jurisdiction and in Violation of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Due Process (filed Dec. 30, 1987).

CONN
H-87-732
CRABRANES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

* * *

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 14th day of September one thousand nine hundred and eighty-eight.

Present:

HONORABLE J. EDWARD LUMBARD,
HONORABLE J. DANIEL MAHONEY,
Circuit Judges

HONORABLE CON. G. CHOLAKIS,
*District Judge.**

AUGUSTUS J. SIMMONS,
Plaintiff-Appellant,

-v.-

J. WILLIAM BURNS, et al.,
Defendants-Appellees.

ORDER
88-6093

(Filed
SEP 14 1988)

ISSUED AS
MANDATE:

October 5,
1988

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* Hon. Con. G. Cholakis, District Judge, United States District Court for the Northern District of New York, sitting by designation.

Appeal from the United States District Court for the District of Connecticut.

This cause came to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said district court be and it hereby is AFFIRMED, and appellant is assessed double court costs.

1. We affirm for the reasons stated in the ruling of the district court. We also consider this a frivolous appeal. This is appellant's third appearance before this court in the past five years, and on each occasion res judicata barred or bars his reassertion of the same claims which were either fully litigated or should have been litigated in prior state and federal proceedings. In his last appearance before this court, *Simmons v. United States of America, et al.*, Docket No. 85-6087 (2d Cir. Nov. 22, 1985) (unpublished order), appellant Simmons was placed on notice that he risked imposition of sanctions should he seek to appeal the same matters again.

2. It is accordingly appropriate to assess double court costs against appellant pursuant to Fed. R. App. P. 38.

3. We specifically call to appellant's attention that we affirm the order of the district court in all respects, including its injunction against further federal litigation

concerning these claims, and that any violation of that injunction may be punished as a contempt of court.

/s/ J Edward Lumbard
J. Edward Lumbard,

/s/ J Daniel Mahoney
J. Daniel Mahoney,
Circuit Judges

/s/ Con. G Cholakis
Con. G. Cholakis,
District Judge

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

November 28, 1988

Mr. Carl J. Schuman
Office of Atty. General
30 Trinity Street
Hartford, CT 06106

Re: Augustus J. Simmons,
v. J. William Burns, Commissioner, Connecticut Department of Transportation, et al.
No. 88-693

Dear Mr. Schuman:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk
/s/ Joseph F. Spaniol, Jr.